

**NEXTEL**

EX PARTE OR LATE FILED

**Nextel Communications, Inc.**

1450 G Street, N.W., Suite 425, Washington, DC 20005  
202 296-8111 FAX 202 347-3834

April 10, 1998

Magalie R. Salas  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

EX PARTE

Re: PR Docket No. 93-144

Dear Ms. Salas:

On behalf of Nextel Communications, Inc. and pursuant to Section 1.1206 of the Federal Communications Commission's ("FCC") Rules, this letter constitutes notice that that attached letter was submitted to Rosalind K. Allen and the other FCC staff members listed therein, on April 10, 1998.

An original and one copy of this letter have been filed with the Secretary pursuant to Section 1.1206. Should any questions arise in connection with this notification, please do not hesitate to contact the undersigned.

Respectfully submitted,

NEXTEL COMMUNICATIONS, INC.

  
Laura L. Holloway  
General Attorney

cc: Rosalind K. Allen  
Ari Fitzgerald  
David R. Sidall  
Paul Misener  
Karen Gulick

David H. Solomon  
Jeanine Poltronieri  
Josh Roland  
James Rubin  
Steve Weingarten

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**Nextel Communications, Inc.**

1450 G Street, N.W., Suite 425, Washington, DC 20005  
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**NEXTEL**

April 10, 1998

Rosalind K. Allen, Deputy Bureau Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission  
Room 5002  
2025 M Street, N.W.  
Washington, D.C. 20554

RE: *Ex Parte* Presentation; PR Docket No.  
93-144; Nextel Communications, Inc.'s  
Petition for Partial Termination of the  
Intercategory Licensing Freeze, filed in  
DA 95-741, Dated March 27, 1998

Dear Ms. Allen:

Thank you for meeting with Larry Krevor and myself on Wednesday April 8 to discuss the above-referenced matter. We appreciate the attention you and your staff gave to Nextel Communications Inc.'s ("Nextel") interest in assuring additional flexibility in the use of 800 MHz spectrum in response to marketplace demands.

As a result of the meeting, we have reexamined the Part 90 rules governing the Specialized Mobile Radio ("SMR"), and Business and Industrial/Land Transportation ("I/LT") Pools. We recognize that the Federal Communications Commission ("Commission") prospectively eliminated intercategory sharing for initial licensing by SMR and Private Land Mobile Radio Service eligibles (*i.e.*, the right of SMRs to access Business and I/LT Pool channels when no SMR channels are available, and vice versa) in the First Report and Order ("First R&O") in PR Docket No. 93-144.<sup>1/</sup> We respectfully suggest herein how the Commission can facilitate additional spectrum use flexibility for 800 MHz licensees consistent with its current licensing rules and policies.

In the First R&O, the Commission redesignated the then-General Category Channels as prospectively SMR-only, concluding this was necessary to provide "sufficient spectrum to address the current demand for SMR spectrum" since "the

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<sup>1/</sup> First Report and Order, 11 FCC Rcd 1463 (1995) at para. 141-142; *affirmed on recon.*, Memorandum Opinion and Order, 12 FCC Rcd 9972 (1997) at para. 106.

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demand for additional spectrum by SMR providers is significantly greater than the demand by non-SMR services."<sup>2/</sup> In exchange for receiving exclusive prospective access to the General Category channels, the Commission eliminated intercategory sharing by SMRs on the Business and I/LT Channels. The Commission concluded that terminating SMR intercategory sharing of the private channels under these circumstances was appropriate to assure their continued availability for non-commercial applications.<sup>3/</sup>

On reconsideration, however, the Commission reversed its decision to redesignate the General Category Channels as prospectively SMR-only, concluding that it should allow "non-SMRs more options and greater flexibility..." than would exist if they were eligible only for private channels.<sup>4/</sup> In reopening the General Category to all 800 MHz eligibles, it appears that the Commission may have inadvertently neglected its earlier conclusion that the 150 General Category channels were necessary to ensure SMRs "sufficient spectrum." Therefore, to maintain equitable spectrum access for both commercial and private eligibles, and avoid interfering with marketplace forces, the Commission should have reinstated intercategory sharing among Business and I/LT applicants on the one hand, and SMR applicants on the other. In the First R&O, the Commission found redesignation of the General Category for SMR-only use necessary to assure SMRs "sufficient spectrum" to meet demand. This justified eliminating intercategory sharing. When it reopened non-SMR access to the General Category Channels, the Commission should have simultaneously reopened SMR access to the Business and I/LT channels. The Commission should correct this oversight, *sua sponte*, when it acts on pending reconsideration requests related to the Second Report and Order in the above-referenced proceeding.<sup>5/</sup>

Furthermore, Nextel respectfully requests that the Commission expeditiously issue a Public Notice clarifying that its decision prohibiting future applications for initial licensing of SMR and Business or I/LT eligibles through intercategory sharing does not bar marketplace-driven, arms-length transactions between existing commercial and private licensees through which an existing Business or I/LT station may be placed in

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<sup>2/</sup> First R&O at para. 141, 137.

<sup>3/</sup> *Id.* at para. 142. Consistent with the above, the Commission also eliminated the right of private licensees to access the SMR pool channels through intercategory sharing.

<sup>4/</sup> *Id.*

<sup>5/</sup> Second Report and Order, 12 FCC Rcd 19079 (1997).

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commercial use, or an SMR station into private mobile use. As explained in the April 8 meeting, Nextel has been approached by a number of private licensees seeking to exchange their Business or I/LT spectrum in return for Nextel's provision of iDEN services. Neither the First R&O nor the subsequent Memorandum Opinion and Order ("MO&O") on reconsideration prohibited assignments or transfers of control of Business or I/LT Channels to SMR licensees for commercial use.

In fact, in the First R&O, the Commission expressly encouraged assignments and transfers of control among 800 MHz licensees, concluding that such transactions would "accommodate market-driven, voluntary relocation arrangements between incumbents and potential EA licensees."6/ As a prospective EA licensee, Nextel will have to relocate numerous upper 200-channel incumbents, including private licensees operating on commercial channels pursuant to the intercategory sharing rules. A number of incumbents on the upper 200 SMR channels are non-commercial operators that would prefer to be relocated to Business or I/LT channels rather than the lower SMR channels. Unless Nextel has access to Business and I/LT channels through these potential transactions with non-commercial entities, Nextel may not have the ability to accommodate the needs of these upper channel incumbents.

Making it clear that assignments or transfers of control of Business or I/LT channels to commercial licensees are permitted would facilitate marketplace-driven solutions to legitimate business needs and demands, and at the same time, the relocation of incumbents out of the upper 200 channels. Such transactions are consistent with the Commission's goal of promoting licensee flexibility to respond to marketplace demands. The Commission's purpose in eliminating intercategory sharing was to preserve the availability of channels for non-commercial and public safety users.7/ Permitting the assignment or transfer of previously-licensed spectrum poses no threat to the availability of existing Business and I/LT channels to private users. Additionally, the Commission's concerns about non-commercial access to spectrum are balanced by its decision on reconsideration to allow non-commercial licensees access to the 150 channels in the General Category -- channels that were not available to non-commercial users at the time the Commission raised concerns about private spectrum availability at 800 MHz and eliminated intercategory sharing.

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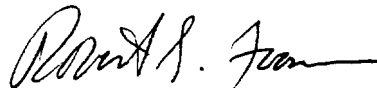
6/ First R&O at para. 75.

7/ MO&O at para. 106.

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Thank you for your time and attention to this matter. I look forward to discussing it with you in greater detail.

Sincerely,

A handwritten signature in dark ink, appearing to read "Robert S. Foosaner", with a long horizontal flourish extending to the right.

Robert S. Foosaner  
Vice President and Chief Regulatory Officer

cc: Jeanine Poltronieri, Associate Bureau Chief  
Josh Roland, Legal Advisor  
James Rubin, Legal Advisor  
Steve Weingarten, Chief, Commercial Wireless Division  
D'Wana Terry, Chief, Private Wireless Division  
Herbert W. Zeiler, Deputy Chief, Private Wireless Division  
John J. Borkowski, Deputy Chief, Policy and Rules Branch, Private Wireless Division

David H. Solomon, Deputy General Counsel  
Ari Fitzgerald, Legal Advisor to Chairman Kennard  
David R. Sidall, Legal Advisor to Commissioner Ness  
Paul E. Misener, Chief of Staff to Commissioner Furchtgott-Roth  
Peter Tenhula, Legal Advisor to Commissioner Powell  
Karen Gulick, Legal Advisor to Commissioner Tristiani